

# **EXHIBIT 5**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK: PART 48

IN RE: OPIOID LITIGATION

INDEX NO.: 400000/2017

August 19, 2020  
Central Islip, New York

MINUTES OF FRYE HEARING  
(Testimony of James Rafalski)

B E F O R E: HON. JERRY GARGUILO  
Supreme Court Justice

A P P E A R A N C E S:

SIMMONS HANLY CONROY, LLC  
**Attorneys for Suffolk County**  
112 Madison Avenue  
New York, New York 10016  
BY: PAUL J. HANLY, JR., ESQ.  
JAYNE CONROY, ESQ.,  
(212) 784-6401  
phanly@simmonsfirm.com  
jconroy@simmonsfirm.com

NAPOLI SHKOLNIK, PLLC  
**Attorneys for Nassau County**  
400 Broadhollow Road, Suite 305  
Melville, New York 11747  
BY: HUNTER SKOLNICK, ESQ.  
SALVATORE C. BADALA, ESQ.  
JOSEPH L. CIACCIO, ESQ.  
(212) 397-1000  
pnapoli@napolilaw.com  
sbadala@napolilaw.com  
jciaccio@napolilaw.com

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Cross/Dr. McCann

117

recall, not whether you're truthful or not.  
You were placed under oath that day, Doctor?

THE WITNESS: Yes.

THE COURT: Yes?

THE WITNESS: Yes.

THE COURT: Okay. And you answered all  
the questions that were put to you as best  
you could, correct?

THE WITNESS: Yes.

THE COURT: And the question is, was  
that question and answer put to you as a  
question form and your answer, correct; is  
that accurate?

THE WITNESS: Yes -- well, I don't  
remember the question and answer. All I can  
do is read the transcript and see it.

Q. Do you take issue with the question and  
answer that you see on the screen right now?

A No.

Q. Thank you, sir.

You never asked Mr. Rafalski to check  
your work to make sure that you had applied the five  
flagging methods the way he intended, correct, sir?

A Correct.